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Attorneys for Plaintiff
Fortifiber Corporation

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

FORTIFIBER CORPORATION,
a California corporation,

Plaintiff,

v.

BENJAMIN OBDYKE INCORPORATED,
a Delaware corporation,

Defendant.

Case No.

COMPLAINT AND JURY DEMAND

Plaintiff Fortifiber Corporation, for its Complaint against Defendant Benjamin Obdyke Incorporated, hereby alleges as follows:

JURISDICTION AND VENUE

1. This action arises under an Act of Congress relating to trademarks, as set forth in Section 43 of the Lanham Act, 15 U.S.C. § 1125(a). This action also includes other claims that are so related to the claims provided by the Federal statute, including common law unfair competition under Nevada law, deceptive trade practices under Nevada law (Nev. Rev. Stat. § 598.0915), unjust enrichment, and business defamation and product disparagement, that they form part of the same case or controversy under Article III of the United States Constitution.

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2. This Court has original subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and has supplemental jurisdiction under 28 U.S.C. § 1367(a).

3. This Court also has diversity subject matter jurisdiction under 28 U.S.C. § 1332, in that the matter in controversy in this action exceeds the sum or value of $75,000, exclusive of interest and cost, and is between citizens of different states.

4. Upon information and belief, Benjamin Obdyke has purposefully established contacts within the state of Nevada and this District and is subject to the jurisdiction of this Court because it continuously and systematically does business in the state of Nevada. Benjamin Obdyke sells its products directly to customers via its non-passive website www.buyobdyke.com, viewed in the state of Nevada and this District, and currently alleges that it provides delivery to shipping addresses within all fifty states, which includes the state of Nevada and this District. Benjamin Obdyke has also disseminated the materially false and misleading descriptions and representations complained of herein via its website www.benjaminobdyke.com, viewed in the state of Nevada and this District and has, therefore, transacted business relating to the subject matter of the claims asserted herein in the state of Nevada and within this District, all of which subject Benjamin Obdyke to the personal jurisdiction of this Court.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

6. Plaintiff Fortifiber Corporation ("Fortifiber") is a corporation organized and existing under the laws of the State of California, having a principal place of business at 300 Industrial Drive, Fernley, Nevada.

7. Defendant Benjamin Obdyke Incorporated ("Benjamin Obdyke") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 1400 Babylon Road, Suite A, Horsham, Pennsylvania.

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NATURE OF THE CASE

8. This is an action for false advertising and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); unfair competition under Nevada law; deceptive trade practices under Nevada law (Nev. Rev. Stat. § 598.0915); unjust enrichment; and business defamation and product disparagement.

9. Fortifiber hereby seeks: (1) injunctive relief; (2) all damages arising from Benjamin Obdyke's unlawful acts; (3) all profits unlawfully obtained by Benjamin Obdyke; and (4) an award of Fortifiber's attorney fees and costs for having to bring this suit to enforce its rights.

GENERAL ALLEGATIONS

10. Fortifiber, a privately held, family-owned business, was founded in 1939, over 75 years ago, and has since grown into a leading domestic and international supplier of weather-resistive barriers for use in buildings and is widely recognized as a supplier of one of the most technologically advanced weather-resistive barriers available.

11. Fortifiber is headquartered in Fernley, Nevada, with sales representatives located throughout the United States. It sells and distributes its products to end users in the United States and Canada through distributors and specialty retailers located throughout the United States and Canada. Fortifiber also occasionally sells its products directly to end users. Fortifiber's products are selected and specified by designers and architects, and purchased and installed by building contractors, remodelers, trades-persons, and building owners.

12. Fortifiber has spent significant resources and efforts since its founding in promoting and advertising its products, including the use of multimedia advertising and industry trade shows.

13. In 2006, Fortifiber launched a new generation in housewrap technology under the trademark WEATHERSMART®. In 2015, Fortifiber expanded its product line with the introduction of Fortifiber's WEATHERSMART® Drainable Housewrap product,

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which is also designed to be a part of a moisture control system for walls to manage and eliminate moisture-related problems, including water-related structural failures, mold, and mildew, and includes an enhanced drainable pattern to direct water out of the wall quickly. See Ex. A.

14. Fortifiber's WEATHERSMART® Drainable Housewrap product complies with a wide range of building code requirements, in particular, the International Code Counsel Evaluation Services Acceptance Criteria for Water Resistive Barriers (AC38). Fortifiber's WEATHERSMART® Drainable Housewrap product fully complies with all of the physical and performance requirements of all applicable ASTM testing protocols and standards, including ASTM E 2273 ("Standard Test Method for Deterring the Drainage Efficiency of Exterior Insulation and Finish Systems (EIFS) Clad Wall Assemblies") and ASTM E 96 ("Standard Test Method for Water Vapor Transmission of Materials"). See Ex. A.

15. Fortifiber's WEATHERSMART® Drainable Housewrap product has been very successful. Since 2015, sales of the WEATHERSMART® Drainable Housewrap product have exceeded Two Million Dollars ($2,000,000).

16. Fortifiber's continuous efforts have caused the relevant consuming public to come to associate Fortifiber's building products, including the WEATHERSMART® Drainable Housewrap product, provided by Fortifiber with high quality and reliability.

Benjamin Obdyke's Misrepresentation of
FORTIFIBER® Drainable Housewrap Products

17. On information and belief, prior to March 9, 2017, Benjamin Obdyke posted a website page entitled "Education and Events," found at http://www.benjaminobdyke.com/education-events, that purported to provide comparative information between various competitive products and Benjamin Obdyke's exterior residential and commercial thermal and moisture management building products, namely, underlayments and wraps in the nature of spacer sheets for

conducting water and vapor between juxtaposed surfaces in a roof or wall of a building sold under the trademark HYDROGAP®. See Ex. B.

18. The competitive products therein included Fortifiber's WEATHERSMART® Drainable Housewrap product, found at http://www.benjaminobdyke.com/education-events/hydrogap-vs-weathersmart-drainable. See Ex. C. This web page contains a further link to an "info sheet" that summarizes the product comparison. See Ex. D.

19. Benjamin Obdyke also included in this website page purportedly comparative information between Benjamin Obdyke's HYDROGAP® housewrap and Fortifiber's WEATHERSMART® Drainable Housewrap products. See Exs. C and D.

20. In the course of Benjamin Obdyke providing such purportedly comparative information between Benjamin Obdyke's HYDROGAP® housewrap and Fortifiber's WEATHERSMART® Drainable Housewrap products, Benjamin Obdyke has presented a number of materially false and misleading descriptions and representations of fact regarding Benjamin Obdyke's HYDROGAP® and Fortifiber's WEATHERSMART® Drainable Housewrap products.

Materially False and Misleading Description and
Representation of Fact No. 1

21. The first materially false and misleading description and representation of fact stated:

About Benjamin Obdyke's HYDROGAP® Housewrap Product	About Fortifiber's WEATHERSMART® Housewrap Product
Provides a True Drainage Gap 1 mm compression resistant spacers assures a continuous and efficient drainage gap	Embossed design does not provide true drainage gap

22. Benjamin Obdyke provides no basis to support its claim that the alleged "embossed design" on Fortifiber's WEATHERSMART® Drainable Housewrap products "does not provide true drainage gap."

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23. There is no code or other industry requirement that any drainable house-wrap product have a "true drainage gap."

24. There is no industry standard relating to any drainable housewrap product having a "true drainage gap."

25. Rather, Benjamin Obdyke refers to an alleged "testing report" for "Drainage Testing of Water-Resistive Barriers" (Ex. C, p. 2) that was allegedly prepared for Benjamin Obdyke by Benjamin Obdyke and/or CTL Group. Benjamin Obdyke also provides a link to this report, which is located at www.benjaminobdyke.com/uploads/resources/Drainage_Testing_Report_for_Distribution_010317_BOI_Logo_Only.pdf. See Ex. E.

26. The test protocol apparently invented and employed by Benjamin Obdyke and/or CTL Group clamps a 1/4-inch Lexan panel to the housewrap product, under apparently high pressure, within a testing chamber and purports to measure the time that water first flows between the Lexan panel and the housewrap product from the top of the chamber to the bottom of the chamber, the time to empty a 24-ounce upper container, and the percentage of water recovered. See Ex. E, p. 2.

27. However, there is no code or other industry requirement that any drainable housewrap product meet any such criteria relating to the time that water first flows from the top of the chamber to the bottom of the chamber, the time to empty a 24-ounce upper container, or the percentage of water recovered.

28. There is no industry standard relating to any drainable housewrap product meeting any such criteria relating to the time that water first flows from the top of the chamber to the bottom of the chamber, the time to empty a 24-ounce upper container, or the percentage of water recovered.

29. Rather, as Benjamin Obdyke alleges, a draining efficiency of at least 90% when tested according to ASTM E 2273 is now recommended or required in order for the housewrap product to be properly installed behind certain exterior sidings. See Ex. D, p. 2.

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30. Benjamin Obdyke fails to acknowledge that Fortifiber's WEATHERSMART® Drainable Housewrap product fully meets such criteria.

31. Benjamin Obdyke apparently invented the three criteria relating to the time that water first flows from the top of the chamber to the bottom of the chamber, the time to empty a 24-ounce upper container, and the percentage of water recovered. Benjamin Obdyke provides no recognized international building code or ASTM test method in which any of these three criteria are relevant, nor has Benjamin Obdyke provided any scientific or industry data that supports any contention that any of these three criteria are relevant to the performance of housewrap products as installed in actual buildings or construction.

32. For example, the time to empty a 24-ounce upper container only reflects the time to empty the top chamber. Benjamin Obdyke does not provide any information about how long it took to empty the water over the full length of the housewrap product. Such a small difference—here a mere a matter of seconds or minutes—between the products relative the three criteria will not necessarily change performance or encourage mold growth.

33. Nothing in the alleged "testing report" for "Drainage Testing of Water-Resistive Barriers" provides or relates to the definition of a "true drainage gap," shows how Benjamin Obdyke's HYDROGAP® housewrap product allegedly has such a "true drainage gap," or shows how Fortifiber's WEATHERSMART® Drainable Housewrap product fails to provide such a "true drainage gap."

34. Benjamin Obdyke's reference to a "true drainage gap" in the context of its HYDROGAP® housewrap product and Fortifiber's WEATHERSMART® Drainable Housewrap product is thus a materially false and misleading description and representation of fact regarding both products.

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Materially False and Misleading Description and
Representation of Fact No. 2

35. The second materially false and misleading description and representation of fact stated:

About Benjamin Obdyke's HYDROGAP® Housewrap Product	About Fortifiber's WEATHERSMART® Housewrap Product
Superior Strength and Water Holdout Tri-laminate substrate with water holdout layer sandwiched by two non-woven layers to protect it from damage during installation	2 layer non-woven with film coating that can be damaged during installation

36. Benjamin Obdyke provides no basis to support its claim that Fortifiber's WEATHERSMART® Drainable Housewrap product "can be damaged during installation," while Benjamin Obdyke's HYDROGAP® housewrap product is somehow protected "from damage during installation."

37. There is no code or other industry requirement that any housewrap product be somehow protected "from damage during installation."

38. There is no industry standard relating to any housewrap product being somehow protected "from damage during installation."

39. Upon information and belief, the alleged "tri-laminate" design of Benjamin Obdyke's HYDROGAP® housewrap product can still be damaged by fasteners or wall splinters just as easily as any other housewrap product.

40. Benjamin Obdyke's reference to the "superior strength and water holdout" of Benjamin Obdyke's HYDROGAP® housewrap product relative Fortifiber's WEATHERSMART® Drainable Housewrap product is thus a materially false and misleading description and representation of fact regarding both products.

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Materially False and Misleading Description and
Representation of Fact No. 3

41. The third materially false and misleading description and representation of fact stated:

About Benjamin Obdyke's HYDROGAP® Housewrap Product	About Fortifiber's WEATHERSMART® Housewrap Product
Omni-Directional Design Allows installation in any direction reducing Waste	Horizontal installation only increases waste and difficulty of installation at gables and patchwork

42. Benjamin Obdyke provides no basis to support its claim that Fortifiber's WEATHERSMART® Drainable Housewrap product is capable of only "horizontal installation," while Benjamin Obdyke's HYDROGAP® housewrap product may be installed "in any direction reducing waste."

43. The criteria of horizontal application is based on a provision in the International Residential Building Code ("IRC") that housewrap product normally be installed horizontally. This provision can be modified, however, if the manufacturer adopts the option of installation in another direction and adds this exemption to its installation guides.

44. Thus, for building projects being constructed under the IRC, a manufacturer can provide a letter, or change its installation instructions, to allow the housewrap product to be installed in a direction other than horizontally. The requirement to install the product horizontally is not a function of the material.

45. For example, at gable ends, one side of the gable is typically the mirror of the other, so an experienced installer knows that it can reduce waste by making a gable cut and using half the material for one part of the gable and using the remainder of the material for the other side.

46. On information and belief, Fortifiber contends that both products can be installed in a non-horizontal orientation.

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47. Benjamin Obdyke's reference to the installation direction of Benjamin Obdyke's HYDROGAP® housewrap product relative Fortifiber's WEATHERSMART® Drainable Housewrap product is thus a materially false and misleading description and representation of fact regarding both products.

Materially False and Misleading Description and
Representation of Fact No. 4

48. The fourth materially false and misleading description and representation of fact stated:

About Benjamin Obdyke's HYDROGAP® Housewrap Product	About Fortifiber's WEATHERSMART® Housewrap Product
Non-Glare Surface reducing installer fatigue	Reflects sunlight – color is not conducive for application in direct sunlight

49. Benjamin Obdyke provides no basis to support its claim that the color of Fortifiber's WEATHERSMART® Drainable Housewrap products "is not conducive for application in direct sunlight," while Benjamin Obdyke's HYDROGAP® housewrap product somehow has a "non-glare surface" and contributes to "reducing installer fatigue."

50. There is no code or other industry requirement that any housewrap product have a "non-glare surface."

51. There is no industry standard relating to any housewrap product having a "non-glare surface."

52. Benjamin Obdyke provides no data describing the threshold between the levels of reflectivity at which the reflectivity impedes installation and/or usage of housewrap product.

53. Fortifiber's WEATHERSMART® Drainable Housewrap product is the same color as the earlier-introduced Fortifiber WEATHERSMART® Housewrap product, which has been installed many times since 2006, and to Fortifiber's knowledge no one has ever complained about the alleged reflectivity of Fortifiber's WEATHERSMART® Housewrap product or Fortifiber's WEATHERSMART® Drainable Housewrap product.

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54. Upon information belief, Benjamin Obdyke again apparently invented in an irrelevant and unmeasurable criteria in an attempt to differentiate its HYDROGAP® housewrap product.

55. Benjamin Obdyke's reference to the reflectivity of Benjamin Obdyke's HYDROGAP® housewrap product relative Fortifiber's WEATHERSMART® Drainable Housewrap product is thus a materially false and misleading description and representation of fact regarding both products.

Materially False and Misleading Description and
Representation of Fact No. 5

56. The fifth materially false and misleading description and representation of fact stated:

About Benjamin Obdyke's HYDROGAP® Housewrap Product	About Fortifiber's WEATHERSMART® Housewrap Product
Seam Tape Not Required Saves labor and material costs	One inch cap fasteners or crown staples are required for installation

57. Benjamin Obdyke provides no basis to support its claim that Fortifiber's WEATHERSMART® Drainable Housewrap product requires "fasteners or crown staples" for installation, while "seam tape" is not required with Benjamin Obdyke's HYDROGAP® housewrap product, which "saves labor and material costs."

58. There is no code or other industry requirement that any housewrap product be capable of being installed without "fasteners or crown staples" or "seam tape."

59. There is no industry standard relating to any housewrap product being capable of being installed without "fasteners or crown staples" or "seam tape."

60. Benjamin Obdyke contemplates that its HYDROGAP® housewrap product is compatible with, and thus capable of being installed with, "staples," "fasteners," and "seam tape." See Ex. G, p. 4.

61. In fact, Benjamin Obdyke states that its HYDROGAP® housewrap product may optionally use seam tape when installing the same. See Ex. G, pp. 2, 4, 7, and 11.

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Further, when Benjamin Obdyke's HYDROGAP® housewrap product is installed as the primary air barrier, Benjamin Obdyke teaches that taping all seams with seam tape (HydroFlash 2.5") is required. See Ex. G, p. 2.

62. Even more misleading, Benjamin Obdyke's HYDROGAP® housewrap product Installation Instructions expressly require that in order to qualify under the warranty: (a) Option I, "Cap fasteners must be used (any brand)"; and (b) Option II, "Must use cap fasteners." See Ex. G, p. 2.

63. Benjamin Obdyke further advises installer(s) to "fasten [its housewrap to sheathing] with nails, staples or cap fasteners." See, Ex. G, pp. 4, 7, and 11.

64. Similarly, Fortifiber recommends that its WEATHERSMART® Drainable Housewrap product should be installed with plastic caps or crown staples. See Exs. H and I. While installation with seam tape is recommended to be most effective as an air barrier, it is not "required" in the context of a moisture barrier. Exs. H and I.

65. The fact that Benjamin Obdyke expressly contemplates using "fasteners" and "seam tape" and expressly implies that Fortifiber's WEATHERSMART® Drainable Housewrap product requires cap fasteners or crown staples, while further inferring that Benjamin Obdyke's HYDROGAP® housewrap product does not, is a materially false and misleading description and representation of fact regarding both products.

COUNT I

Federal False Advertising and Unfair Competition

66. Fortifiber realleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

67. The acts of Benjamin Obdyke detailed above constitute materially false and misleading descriptions and representations of fact, which, in commercial advertising and promotion, misrepresent the nature, characteristics, and qualities of Benjamin Obdyke's goods and Fortifiber's goods.

68. Upon information and belief, Benjamin Obdyke has actual knowledge of the nature, characteristics, and qualities of Benjamin Obdyke's goods and Fortifiber's

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goods, and Benjamin Obdyke committed the foregoing acts with full knowledge that it was, is, and will continue to be disseminating materially false and misleading descriptions and representations of fact.

69. The various claims of superiority made by Benjamin Obdyke for its HYDROGAP® housewrap product are materially false or misleading and misrepresent the nature, characteristics, or qualities of Benjamin Obdyke's HYDROGAP® housewrap product. Moreover, the claims about Fortifiber and its products are materially false or misleading and misrepresent the nature, characteristics, or qualities of Fortifiber and its WEATHERSMART® Drainable Housewrap product.

70. Upon information and belief, Benjamin Obdyke's claims have or are likely to deceive or confuse a substantial segment of the buying public. Moreover, Benjamin Obdyke's claims have influenced or are likely to influence the buying publics' purchasing decisions. This deceptive conduct by Benjamin Obdyke is and has been deliberate and has injured and continues to injure customers.

71. Benjamin Obdyke's HYDROGAP® housewrap product is not superior to Fortifiber's WEATHERSMART® Drainable Housewrap product, and Benjamin Obdyke knew or should have known that to be so.

72. Benjamin Obdyke's acts as set forth above constitute violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

73. As a proximate result of Benjamin Obdyke's actions, Fortifiber has suffered and will continue to suffer damage to its business, goodwill, reputation, and profits. The injury to Fortifiber is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Fortifiber for its injuries.

74. The foregoing unlawful acts of Benjamin Obdyke have been and continue to be deliberate, willful, and wanton, making this an exceptional case within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117.

75. Fortifiber has no adequate remedy at law.

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COUNT II

Common Law Unfair Competition Under Nevada Law

76. Fortifiber realleges each and every allegation contained in the preceding paragraphs this Complaint as though fully set forth herein.

77. Fortifiber's building products advertised and sold are primarily used for commercial or residential purposes.

78. Benjamin Obdyke's materially false and misleading descriptions and representations of fact violate the common law of the State of Nevada against unfair competition because Benjamin Obdyke has misrepresented the nature, characteristics, and qualities of Benjamin Obdyke's and Fortifiber's goods in commercial advertising and promotions.

79. Upon information and belief, Benjamin Obdyke has received revenues and profits as a result of its materially false and misleading descriptions and representations of fact, to which Benjamin Obdyke is not entitled, and Fortifiber has also suffered damages as a result of Benjamin Obdyke's materially false and misleading descriptions and representations, for which Benjamin Obdyke is the proximate cause.

80. Benjamin Obdyke's unlawful acts as set forth herein has been and continues to be willful, deliberate, and in bad faith, with knowledge that such conduct was, is, and will continue to be harmful to Fortifiber.

81. Fortifiber and the general public have been, and continue to be, irreparably damaged by the violation of this statute, and Fortifiber has no adequate remedy at law. Unless enjoined, Benjamin Obdyke will continue to engage in materially false and misleading descriptions and representations of fact causing further injury to Fortifiber and confusing the public.

COUNT III

Deceptive Trade Practices Under Nevada Law

82. Fortifiber realleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

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83. Fortifiber's building products advertised and sold are primarily used for commercial or residential purposes.

84. Benjamin Obdyke's materially false and misleading descriptions and representations of fact is a Deceptive Trade Practice under Nevada law (Nev. Rev. Stat. § 598.0915) because Benjamin Obdyke has in the course of its business: (1) knowingly made a materially false representation as to characteristics and benefits of goods for sale; (2) knowingly represented goods as of a particular quality or grade, and knew or should have known they are of another quality or grade; and (3) knowingly disparaged the goods of Fortifiber.

85. The acts of Benjamin Obdyke have caused and are continuing to cause great and irreparable harm to Fortifiber and, unless permanently enjoined by this Court, such irreparable harm will continue.

COUNT IV

Unjust Enrichment

86. Fortifiber realleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

87. Benjamin Obdyke has benefitted from its materially false and misleading descriptions and representations. This benefit has included, but is not limited to, revenue and profits obtained from sales of Benjamin Obdyke's goods sold under the infringing "HYDROGAP" designation to which Fortifiber's WEATHERSMART® Drainable Housewrap product has been compared and which, in equity and good conscience, belong to Fortifiber.

88. Benjamin Obdyke has been unjustly enriched through its materially false and misleading descriptions and representations of fact that have injured and have resulted in inequity to Fortifiber as described above. It is unjust and not equitable to allow Benjamin Obdyke to benefit from its materially false and misleading descriptions and representations of fact without compensation Fortifiber.

89. The acts of Benjamin Obdyke have caused and are continuing to cause great and irreparable harm to Fortifiber and, unless permanently enjoined by this Court, such irreparable harm will continue.

COUNT V

Business Defamation/Product Disparagement

90. Fortifiber realleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

91. Benjamin Obdyke has made materially false and defamatory statements of fact concerning Fortifiber and Fortifiber's WEATHERSMART® Drainable Housewrap product and, in so doing, has disparaged Fortifiber's WEATHERSMART® Drainable Housewrap product.

92. These materially false and defamatory statements of fact are unprivileged publications to third parties.

93. These materially false and defamatory statements of fact have caused Fortifiber material and reputational harm.

94. Benjamin Obdyke was, at least, negligent in making these false and defamatory statements of fact, and the statements actually rise to actual malice.

95. Since these business defamation claims relate to Fortifiber and Fortifiber's business reputation or practices, defamation is *per se*, not requiring proof of special damages. Nevertheless, Fortifiber has pecuniary loss directly attributed to Benjamin Obdyke's false statements.

PRAYER FOR RELIEF

WHEREFORE, Fortifiber respectfully requests judgment against Benjamin Obdyke as follows:

A. Preliminarily and permanently enjoining and restraining Benjamin Obdyke and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Benjamin Obdyke from making false and misleading descriptions and representations.

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B. Directing such other relief as the Court may deem appropriate to prevent the trade and public from forming any erroneous impression regarding the nature, characteristic, or quality of any product sold or otherwise distributed or promoted by Benjamin Obdyke or Fortifiber.

C. Directing Benjamin Obdyke, pursuant to Section 36 of the Lanham Act, 15 U.S.C. § 1118, to destroy all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, internet content, stationary, software, and any other items in its possession or control which contain the false and misleading descriptions and representations and to destroy all plates, molds, matrices, masters, and other mean of making any of those offending items.

D. Directing Benjamin Obdyke to file with the Court and to serve upon Fortifiber within thirty (30) days after service of an injunction in this action, a written report by Benjamin Obdyke, under oath, setting forth in detail the manner in which Benjamin Obdyke has complied with the injunction.

E. Awarding Fortifiber all damages, including Benjamin Obdyke's profits, any damages sustained by Fortifiber, and the costs of the action, permitted by Section 35 of the Lanham Act, 15 U.S.C. § 1117, including trebled damages.

F. Awarding Fortifiber all profits, gains, benefits, and advantages derived by Benjamin Obdyke from its unjust enrichment and other conduct as alleged herein.

G. Awarding Fortifiber its damages by reason of Benjamin Obdyke's acts of false advertising and unfair competition, and unjust enrichment, including trebled damages, in an amount to be established at trial.

H. Awarding Fortifiber exemplary and/or punitive damages by reason of Benjamin Obdyke's willful, intentional, and malicious acts described herein, in an amount to be established at trial.

I. Awarding Fortifiber reasonable attorney fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a) and the costs of this action.

J. Awarding Fortifiber such further relief as this Court deems just and proper.

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JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fortifiber demands a trial by jury on any and all issues so triable under applicable law.

Dated this 22nd day of March, 2017.

MCDONALD CARANO LLP

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